

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION CIRCUIT/SUPERIOR COURT
CAUSE NO 49001 08 10 PL 048741

STATE OF INDIANA,)
)
Plaintiff,)
)
v.)
)
MARK A. GOLES,)
)
Defendant.)

FILED

(46) OCT 28 2008

Elizabeth A. White
CLERK OF THE MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Thomas Irons, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).

2. At all times relevant to this complaint, the Defendant, Mark A. Goles, was an individual engaged in the solicitation and/or sale of items via the Internet from his principal place of business in Marion County located at 4866 ½ West 15th Street, Indianapolis, Indiana 46224. Upon information and belief, Defendant currently resides at 6550 Yucca Street, Apt. 114, Hollywood, California 90027.

FACTS

3. Since at least April 2006, the Defendant has engaged in the solicitation and/or sale of computers to consumers via the Internet.

4. Defendant typically entered online chat rooms under various user names, including but not limited to, Banguptv233@aol.com, banguptv@gmail.com, mg628664@aol.com, FLandStudios140@aol.com, mednetlive@aol.com, medianetlive224@aol.com, and variations thereof, where he would solicit the sale of items, including laptop computers, to consumers.

5. Defendant and unsuspecting consumers then typically entered an online sale agreement wherein Defendant represented that he would deliver an item upon receipt of payment in the form of money order, transfer or wire via MoneyGram and/or Western Union, among others, that was payable to Defendant in places including, but not limited to, Indianapolis, Indiana and Avon, Indiana.

6. In at least four instances identified below, Defendant failed to deliver laptop computers to consumers or provide reimbursement despite receiving the agreed upon payment.

A. Allegations regarding Consumer Tony DeCarlo's Transaction.

7. On or around April 17, 2007, the Defendant solicited and entered into an online sale of a laptop computer with consumer Tony DeCarlo ("DeCarlo"), wherein the Defendant represented he would sell the computer to DeCarlo for a total price of Two Hundred Fifty Dollars (\$250.00).

8. On or around April 17, 2007, DeCarlo wired Defendant Two Hundred and Fifty Dollars (\$250.00) and incurred an additional Thirty Two Dollars and Five Cents (\$32.05) in associated fees.

9. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), Defendant is presumed to have represented at the time of the sale he would deliver the computer within a reasonable period of time.

10. As of the date of filing, Defendant has not delivered the computer or provided a refund to DeCarlo.

B. Allegations regarding Consumer Margaret Mary Fernandez's Transaction.

11. On or around April 22, 2007, the Defendant solicited and entered into an online sale of a laptop computer with consumer Margaret Mary Fernandez ("Fernandez"), wherein the Defendant represented he would sell the computer to Fernandez for a total price of Two Hundred Dollars (\$200.00).

12. On or around April 22, 2007, Fernandez wired Defendant Two Hundred Dollars (\$200.00) and incurred an additional Twelve Dollars (\$12.00) in associated fees.

13. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), Defendant is presumed to have represented at the time of the sale he would deliver the computer within a reasonable period of time.

14. As of the date of filing, Defendant has not delivered the computer or provided a refund to Fernandez.

C. Allegations regarding Consumer Henry Springer's Transaction.

15. On or around August 14, 2007, the Defendant solicited and entered into an online sale of a laptop computer with consumer Henry Springer ("Springer"), wherein the Defendant represented he would sell the computer to Springer for a total price of Two Hundred Dollars (\$200.00).

16. On or around August 14, 2007, Springer wired Defendant Two Hundred Dollars (\$200.00) and incurred an additional Eleven Dollars and Forty-Six Cents (\$11.46) in associated fees.

17. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), Defendant is presumed to have represented at the time of the sale he would deliver the computer within a reasonable period of time.

18. As of the date of filing, Defendant has not delivered the computer or provided a refund to Springer.

D. Allegations regarding Consumer Luis Crespo's Transaction.

19. On or around November 13, 2007, the Defendant solicited and entered into an online sale of a laptop computer with consumer Luis Crespo ("Crespo"), wherein the Defendant represented he would sell the computer to Crespo for a total price of Two Hundred Dollars (\$200.00).

20. On or around November 13, 2007, Crespo wired Defendant Two Hundred Dollars (\$200.00).

21. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), Defendant is presumed to have represented at the time of the sale he would deliver the computer within a reasonable period of time.

22. As of the date of filing, Defendant has not delivered the computer or provided a refund to Crespo.

COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

23. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 22 above.

24. The transactions referred to in paragraphs 7 to 22 above are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(a)(1).

25. The Defendant is a “supplier” as defined by Ind. Code § 24-5-0.5-2(a)(3).

26. By representing to consumers that Defendant would sell items, including laptop computers to consumers, when the Defendant knew or reasonably should have known the consumers would not receive the items as represented, or any other such benefit, including but not limited to those consumers referenced in paragraphs 7 to 22 above, the Defendant violated the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

27. By representing to consumers that items, including laptop computers, would be supplied in greater quantity than the Defendant intended or reasonably expected, including but not limited to those consumers referenced in paragraphs 7 to 22 above, the Defendant violated the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(4).

28. By representing to consumers that the Defendant would be able to deliver items, including laptop computers, issue refunds, and/or otherwise complete the subject of the consumer transaction within a stated or reasonable period of time, when the Defendant knew or reasonably should have known he could not, including but not limited to those transactions referenced in paragraphs 7 to 22 above, the Defendant violated the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

29. By representing to consumers that the consumers would be able to purchase items, including laptop computers, as advertised by the Defendant, including but not limited to those consumers referenced in paragraphs 7 to 22 above, when the Defendant did not intend to sell the items, the Defendant violated the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

**COUNT II – KNOWING AND INTENTIONAL VIOLATIONS OF
THE DECEPTIVE CONSUMER SALES ACT**

30. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 29 above.

31. The misrepresentations and deceptive acts set forth in paragraphs 7 to 22 above, were committed by the Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Mark A. Goles, and issue a permanent injunction, pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendant from the following:

- a. representing, expressly or by implication, that the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should have known it does not have;
- b. representing, expressly or by implication, that the subject of a consumer transaction will be supplied to the public in greater quantity than the Defendant intends or reasonably expects;
- c. representing, expressly or by implication, that the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know he cannot; and
- d. representing, expressly or by implication, that consumers will be able to purchase the subject of a consumer transaction as advertised by the Defendant, if the Defendant does not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

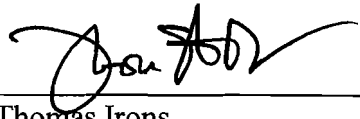
- a. cancellation of all of the Defendant's unlawful agreements and/or contracts with consumers, pursuant to Ind. Code § 24-5-0.5-4(d);
- b. consumer restitution, pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers to the Defendant, and all associated transfer fees, in an amount to be determined at trial;
- c. costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- e. civil penalties, pursuant to Ind. Code § 24-5-0.5-8, for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and

f. all other just and proper relief.

Respectfully submitted,

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By:


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